

Arizona, Idaho, Nevada, and Montana Public Uses Enumerated

for the Eminent Domain Subcommittee of the Environmental Quality Council
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State by state comparisons of specific provisions contained in eminent domain statutes is a challenging task. In all of the states reviewed, the statutes provide for the basic and fundamental principles associated with the exercise of eminent domain: the proposed use must be a public use as designated by the legislature, the entity must have the authority to condemn, and just compensation must be made. Contrasting which entities have been granted the authority to exercise eminent domain, or for what public purposes eminent domain may be exercised, requires a lengthy deconstruction of individual state laws. Daunting as that is, it is made even more difficult by the fact that many states, including Montana, have made only minor changes, or no changes, to their eminent domain laws in years. Many of the laws were written in the early 1900's and are extremely difficult to interpret.

In the case of Montana, the public uses for which eminent domain may be exercised are found in section 70-30-102, MCA, and throughout the code governing the powers of certain entities (i.e., railroads, pipelines, local governments, etc.). Of the states surveyed, Alabama, California, and Colorado list their public uses as part of the powers and duties given to particular entities. On the other hand, Arizona, Idaho, and Nevada list all of their public uses in one section of the eminent domain statutes. It would seem that states that list the public uses in one broad statute covering the exercise of eminent domain and referencing those public uses to the laws directing the conduct of certain entities offers affected stakeholders a clear view into this complex public policy issue. The subcommittee has the authority to review which uses are public uses and determine whether the current method of listing those uses is a sensible approach.

For comparison purposes, Arizona, Idaho, Nevada and Montana statutes are provided within this paper. Please refer to Appendix A for the Montana statutes identifying public uses that are not specifically identified in section 70-30-102, MCA.

Montana

Section 70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys

and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(6) private roads leading from highways to residences or farms;

(7) telephone or electric light lines;

(8) telegraph lines;

(9) sewerage of any city, county, or town or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than 10 families or of any public buildings belonging to the state or to any college or university;

(10) tramway lines;

(11) electric power lines;

(12) logging railways;

(13) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for such time as the court or judge may determine; provided, the grounds of state institutions be excepted;

(14) underground reservoirs suitable for storage of natural gas;

(15) to mine and extract ores, metals, or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others. However, the use of the surface for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose;

(16) to restore and reclaim lands strip- or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands.

Arizona

12-1111. Purposes for which eminent domain may be exercised

Subject to the provisions of this title, the right of eminent domain may be exercised by the state, a county, city, town, village, or political subdivision, or by a person, for the following uses:

1. All public uses authorized by the government of the United States.
2. Buildings and grounds for any public use of the state and all other public uses authorized by the legislature.
3. Buildings and grounds for the use of a county, city, town or school district.
4. Canals, aqueducts, flumes, ditches or pipes, for conducting water for the use of the inhabitants or for drainage of a county, city, town or village.
5. Raising the banks of streams, removing obstructions therefrom, or widening, deepening or straightening their channels.
6. Roads, streets and alleys, and all other public uses for the benefit of a county, city, town or village, or the inhabitants thereof, which is authorized by the legislature. The method of apportioning and collecting the costs of the improvements authorized by paragraphs 3, 4, 5 and 6 shall be as provided in the law by which they are authorized.
7. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads and highways.
8. Steam, horse, mule, electric and cable railroads or railways.
9. Telegraph and telephone lines and conduits for public communication.
10. Electric light and power transmission lines, pipe lines used for supplying gas, and all transportation, transmission and intercommunication facilities of public service agencies.

11. Aviation fields.

12. Reservoirs, canals, ditches, flumes, aqueducts and pipes, for the use of a county, city, town or village, or its inhabitants, or for public transportation for supplying mines and other industrial enterprises, farms and farm neighborhoods with water for irrigation, domestic and other needful purposes, and for generating electricity.

13. Draining and reclaiming lands, and for floating logs and lumber on nonnavigable streams.

14. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, and outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, and an occupancy in common by the owners or possessors of different mines, or any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

15. Byroads leading from highways to residences and farms.

16. Private canals, ditches, flumes, aqueducts and pipes for conducting water from natural water courses or bodies or from public sources where the lands to be irrigated are not directly reached by such natural water course or public sources.

17. Pipe lines to carry petroleum, petroleum products or any other liquid.

18. Rights of way, station grounds, pits, yards, sidetracks and other necessary facilities for railways.

Idaho

7-701. USES FOR WHICH AUTHORIZED. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislature.

2. Public buildings and grounds for the use of any county, incorporated city or school district; canals, aqueducts, flumes, ditches or pipes for conducting water for use on state property or for the use of the inhabitants of any county or incorporated city, or for draining state property for any county or incorporated city, raising the banks of streams, removing obstructions therefrom and widening, deepening or straightening their channels, roads, streets, alleys, and all other public uses for the benefit of the state or of any county, incorporated city or the inhabitants thereof.

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, steam, electric and horse railroads, reservoirs, canals, ditches, flumes, aqueducts and pipes, for public transportation supplying mines and farming neighborhoods with water, and

draining and reclaiming lands, and for storing and floating logs and lumber on streams not navigable.

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

5. Byroads, leading from highways to residences and farms.

6. Telephones, telegraph and telephone lines.

7. Sewerage of any incorporated city.

8. Cemeteries for the burial of the dead, and enlarging and adding to the same and the grounds thereof.

9. Pipe lines for the transmission, delivery, furnishing or distribution of natural or manufactured gas for light, heat or power, or for the transportation of crude petroleum or petroleum products; also for tanks, reservoirs, storage, terminal and pumping facilities, telephone, telegraph and power lines necessarily incident to such pipe lines.

10. Snow fences or barriers for the protection of highways from drifting snow.

11. Electric distribution and transmission lines for the delivery, furnishing, distribution, and transmission of electric current for power, lighting, heating or other purposes; and structures, facilities and equipment for the production, generation, and manufacture of electric current for power, lighting, heating or other purposes.

Nevada

NRS 37.010 Public purposes for which right of eminent domain may be exercised. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public purposes:

1. Federal activities. All public purposes authorized by the Government of the United States.

2. State activities. Public buildings and grounds for the use of the state, the University and Community College System of Nevada and all other public purposes authorized by the legislature.

3. County, city, town and school district activities. Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising

the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels, for roads, streets and alleys, and all other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.

4. Bridges, toll roads, railroads, street railways and similar uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.

5. Ditches, canals, aqueducts for smelting, domestic uses, irrigation and reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, or for floating logs and lumber on streams not navigable.

6. Mining, smelting and related activities. Mining, smelting and related activities as follows:
(a) Mining and related activities, which are recognized as the paramount interest of this state.
(b) Roads, railroads, tramways, tunnels, ditches, flumes, pipes, reservoirs, dams, water gates, canals, aqueducts and dumping places to facilitate the milling, smelting or other reduction of ores, the working, reclamation or dewatering of mines, and for all mining purposes, outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other work for the reduction of ores from mines, mill dams, pipe lines, tanks or reservoirs for natural gas or oil, an occupancy in common by the owners or possessors of different mines, mills, smelters or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter and the necessary land upon which to erect smelters and to operate them successfully, including the deposit of fine flue dust, fumes and smoke.

7. Byroads. Byroads leading from highways to residences and farms.

8. Public utilities. Lines for telegraph, telephone, electric light and electric power and sites for plants for electric light and power.

9. Sewerage. Sewerage of any city, town, settlement of not less than 10 families or any public building belonging to the state or college or university.

10. Water for generation and transmission of electricity. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery to generate and transmit electricity for power, light or heat.

11. Cemeteries, public parks. Cemeteries or public parks.

12. Pipe lines of beet sugar industry. Pipe lines to conduct any liquids connected with the manufacture of beet sugar.

13. Pipe lines for petroleum products, natural gas. Pipe lines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.

14. Aviation. Airports, facilities for air navigation and aerial rights of way.

15. Monorails. Monorails and any other overhead or underground system used for public transportation.

16. Community antenna television companies. Community antenna television companies which have been granted a franchise from the governing body of the jurisdictions in which they provide services. The exercise of the power of eminent domain may include the right to use the wires, conduits, cables or poles of any public utility if:

(a) It creates no substantial detriment to the service provided by the utility;

(b) It causes no irreparable injury to the utility; and

(c) The public utilities commission of Nevada, after giving notice and affording a hearing to all persons affected by the proposed use of the wires, conduits, cables or poles, has found that it is in the public interest.

17. Redevelopment. The acquisition of property pursuant to NRS 279.382 to 279.685, inclusive.

[1911 CPA § 664; A 1921, 262; 1937, 351; 1931 NCL § 9153]—(NRS A 1961, 170; 1967, 868, 1228; 1969, 246; 1977, 652; 1983, 2008; 1985, 2080; 1987, 1297; 1993, 361; 1997, 1961, 3365; 1999, 677, 679)

NRS 37.015 Necessary access for owners, occupants of ranges, grazing lands: Exercise of power of eminent domain. The State of Nevada or any political subdivision or district which possesses the power of eminent domain may, in addition to other uses for which the power may be exercised, exercise the power of eminent domain for the purpose of providing necessary access for the owners or occupants thereof to ranges and grazing lands.

(Added to NRS by 1969, 224)

Appendix A

Montana uses defined in statutes other than the eminent domain law

- **Uses associated with cities and towns exercising the right of eminent domain**

7-5-4106. Power of condemnation. The city or town council has power to condemn private property for opening, establishing, widening, or altering any street, alley, park, sewer, or waterway in the city or town and for establishing, constructing, and maintaining any sewer, waterway, or drain ditch outside of the corporate limits of the municipality or for any other municipal and public use. The ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking and must conform to and the proceedings thereunder had as provided in Title 70, chapters 30 and 31, concerning eminent domain.

History: En. Subd. 43, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.42, R.C.M. 1935; R.C.M. 1947, 11-945.

7-13-4404. Use of eminent domain powers to acquire water supply system. (1) In case agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply under the laws relating to the taking of private property for public use.

(2) Any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply, of the value thereof legally determined, within 6 months from and after final judgment is entered in the condemnation proceedings.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-13-4406. Control over territory occupied by water supply system -- taxation and condemnation powers.

Cities and towns shall have jurisdiction and control over the territory occupied by their public works; over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works; and also over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose, the city or town shall be authorized to condemn private property in the manner provided by law and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(4).

7-14-4501. Acquisition, construction, and maintenance of parking areas. A city or town council shall have power to:

(1) acquire by lease, gift, purchase, or condemnation lots or lands for use as parking areas for motor vehicles;

(2) construct and maintain thereon or on any premises owned or under lease by such city or town suitable parking facilities for the use of the public and for general traffic control; and

(3) make charges for the use of such facilities.

History: En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part)

7-14-4801. Acquisition of landing fields and parking areas for aircraft. The city or town council has power to acquire by lease, gift, purchase, or condemnation lots or lands for landing fields or parking areas for aircraft, within

or without the corporate limits of the municipality, and to exercise municipal jurisdiction over the lots or lands, where such lots or lands or any portion thereof are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: En. Subd. 84, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.83, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965; R.C.M. 1947, 11-986(part).

7-16-4106. Acquisition of property for athletic fields and civic stadiums. (1) Every city or town council shall have power to:

(a) acquire by gift, purchase, or condemnation lands for athletic fields and civic stadiums within or without the corporate limits of the municipality;

(b) establish and regulate such fields and civic stadiums;

(c) exercise municipal jurisdiction over the lands so acquired where such lands or any portion thereof are without the corporate limits of the municipality to the same extent as though they were within said corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums thereon.

(2) The city or town councils are authorized to set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums.

History: En. Sec. 1, Ch. 68, L. 1929; re-en. Sec. 5167.1, R.C.M. 1935; R.C.M. 1947, 62-210.

67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter, in any case in which:

(1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

History: En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721.

67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns in this state may, either individually or by the joint action of a county and one or more of the cities and towns within its border, acquire by gift, deed, purchase, or condemnation land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town.

(2) In addition a county, city, or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or any combination of such counties, cities, or towns. Such airport need not be located, in whole or in part, within the limits of each subdivision participating in the joint venture.

History: En. Sec. 1, Ch. 108, L. 1929; re-en. Sec. 5668.35, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961; R.C.M. 1947, 1-801.

76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation and appropriation private property within the limits of the project, including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part.

(2) All provisions of the laws of Montana relating to the condemnation of lands for public purposes shall

apply to the provisions thereof insofar as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967; R.C.M. 1947, 89-3303.

- **Uses associated with municipalities exercising the right of eminent domain**

7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for an urban renewal project under this part, a municipality shall have the right to acquire by condemnation any interest in real property which it may deem necessary for such purpose.

(2) Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959; R.C.M. 1947, 11-3908.

67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter, in any case in which:

(1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

History: En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721.

67-10-201. General municipal powers. (1) Every municipality may, out of any appropriations or other money made available for such purposes, plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this state, including the construction, installation, equipment, maintenance, and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements, in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit safe and efficient operation of the airport; to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or to prevent the establishment of airport hazards.

(2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire existing airports and air navigation facilities, provided however it may not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of such municipality or public agency.

(3) For the purposes of this chapter, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of this state, any submerged lands under such public waters and any artificial or reclaimed lands which before the artificial making or reclamation thereof constituted a portion of the submerged lands under such public waters, and may

construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(4) All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(5) A municipality may enter into any contracts necessary for the execution of the powers granted it and for the purposes provided by this chapter.

History: En. Secs. 2, 13, Ch. 288, L. 1947; R.C.M. 1947, 1-809, 1-820; amd. Sec. 5, Ch. 140, L. 1979

- **Uses associated with counties exercising the right of eminent domain**

7-14-2803. Establishment and operation of public ferry or wharf upon petition. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct or to acquire by condemnation or purchase and to operate, maintain, direct, regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary, or bay within or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

History: En. Sec. 1, Ch. 33, L. 1909; re-en. Sec. 4477, R.C.M. 1921; re-en. Sec. 4477, R.C.M. 1935; R.C.M. 1947, 16-1116.

7-14-2804. Acquisition of property for public ferries and wharves. (1) Upon the proper showing as provided in 7-14-2803, each board of county commissioners may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of Title 70, chapter 30.

(3) No board shall establish or maintain a county ferry or wharf with a landing place in any incorporated city or town which by its charter is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965; R.C.M. 1947, 32-4017.

7-14-2829. Acquisition of land for ferry. When there are lands necessary for the construction, erection, or use of such ferry which cannot be procured by agreement between the owner and the landowner, the right-of-way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

History: En. Sec. 2834, Pol. C. 1895; re-en. Sec. 1471, Rev. C. 1907; re-en. Sec. 1780, R.C.M. 1921; Cal. Pol. C. Sec. 2855; re-en. Sec. 1780, R.C.M. 1935; R.C.M. 1947, 32-1515.

7-16-2105. Acquisition of land by county for public recreational or cultural purposes. (1) The counties of this state are authorized to acquire, by purchase, grant, deed, gift, devise, condemnation, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination thereof or may lease the land tracts, each of which must be situated as to offer ready access to a public highway.

(2) This section may not be construed as amending or repealing 7-16-2201 through 7-16-2203.

History: En. Sec. 1, Ch. 51, L. 1929; re-en. Sec. 4444.1, R.C.M. 1935; amd. Secs. 1, 2, Ch. 239, L. 1947; R.C.M. 1947, 62-101; amd. Sec. 9, Ch. 543, L. 1995; amd. Sec. 38, Ch. 42, L. 1997.

7-35-2201. Power of county commissioners to conduct cemeteries. The board of county commissioners of any county within Montana is hereby given jurisdiction and power to:

(1) establish and conduct cemeteries;

(2) acquire lands for said purpose by purchase, condemnation, gift, or devise; and

(3) acquire by purchase, condemnation, gift, or devise cemeteries already established and conducted by persons, firms, or corporations, including municipal corporations.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd.

Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter, in any case in which:

- (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;
- (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or
- (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

History: En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721

67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns in this state may, either individually or by the joint action of a county and one or more of the cities and towns within its border, acquire by gift, deed, purchase, or condemnation land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town.

(2) In addition a county, city, or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or any combination of such counties, cities, or towns. Such airport need not be located, in whole or in part, within the limits of each subdivision participating in the joint venture.

History: En. Sec. 1, Ch. 108, L. 1929; re-en. Sec. 5668.35, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961; R.C.M. 1947, 1-801.

76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation and appropriation private property within the limits of the project, including the right to cross railroad right-of-way and property and highway right-of-way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part.

(2) All provisions of the laws of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof insofar as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967; R.C.M. 1947, 89-3303.

- **Uses associated with county water and sewer districts exercising the right of eminent domain**

7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part may:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. Beneficial purposes include but are not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;

(3) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and

conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated in the district;

(4) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(5) commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights referred to in this section as may endanger the inhabitants or lands of the district;

(6) lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain them;

(7) sell water or the use of water for household or domestic or other similar purposes or sell sewer service and, whenever there is a surplus of water or sewerworks capacity, sell or otherwise dispose of the water or sewerworks capacity to municipalities or towns or to consumers located within or outside the boundaries of the district;

(8) retain the services of architects and engineers for designing, preparing a feasibility study for, and drawing plans and specifications of a water or sewer system for the district, with the cost of these services apportioned and assigned against properties in the district; and

(9) establish, by ordinance or resolution, rules and regulations for the operation, maintenance, use, and availability of any of its systems or improvements, including but not limited to connection procedures, service termination, and payment of rates and charges, including penalties and interest charges for delinquent accounts.

History: En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4514(5) thru (7); amd. Sec. 1, Ch. 394, L. 1989; amd. Sec. 11, Ch. 645, L. 1991; amd. Sec. 1, Ch. 518, L. 1995.

- **Uses associated with consolidated local government water supply and sewer districts exercising the right of eminent domain**

7-13-3041. Acquisition of private water supply system. (1) If a franchise has been granted to or a contract made with any person or corporation and the person or corporation has established or maintained a system of water supply or has valuable water rights or a supply of water desired by the district for supplying the district with water, the governing body granting the franchise, entering the contract, or desiring the water supply shall, by the passage of a resolution, give notice to the person or corporation that it desires to purchase the plant, franchise, or water supply of the person or corporation.

(2) The governing body passing a resolution as provided in subsection (1) may purchase the plant, franchise, or water supply upon terms agreed to by the parties.

(3) In case agreement is not reached in accordance with subsection (2), the governing body may take the plant, franchise, or water supply by eminent domain in accordance with Title 70, chapters 30 and 31.

History: En. Sec. 34, Ch. 282, L. 1991.

- **Uses associated with irrigation districts exercising the right of eminent domain**

85-7-1904. Acquisition of water and waterworks by board. (1) The board shall have power and authority to:

(a) appropriate water in the name of the district;

(b) acquire, by purchase, lease, or contract, water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation, or other legal means:

(i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district or subdistrict system of irrigation works.

(2) The board may contract with the owner or owners of canals, reservoirs, dams, and other works

purchased and in the course of construction for the completion thereof.

(3) A purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of \$150,000 or 25% of the district's annual operation and maintenance budget, whichever is greater, may not be entered into by the district without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district or, if the purchase, lease, or contract substantially benefits a subdistrict in the district, by a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict. Any splitting or division of a purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section renders the divided or split contract or contracts void.

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R.C.M. 1921; amd. Sec. 4, Ch. 157, L. 1923; re-en. Sec. 7174, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1973; amd. Sec. 1, Ch. 307, L. 1975; R.C.M. 1947, 89-1301(3), (5); amd. Sec. 4, Ch. 326, L. 1979; amd. Sec. 7, Ch. 112, L. 1981; amd. Sec. 1, Ch. 328, L. 1983; amd. Sec. 1, Ch. 165, L. 1987; amd. Sec. 8, Ch. 439, L. 1989.

- **Uses associated with highway authorities exercising the right of eminent domain**

7-14-101. Acquisition of property for controlled-access facility. The highway authorities of the counties, incorporated cities, and towns, respectively or in cooperation with each other or the state, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: En. Sec. 8-218, Ch. 197, L. 1965; R.C.M. 1947, 32-4018(part).

60-5-104. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use. Each such authority shall by resolution make the findings and determinations provided for in 60-5-103.

(2) The highway authorities of the state, counties, incorporated cities, and towns, respectively, or in cooperation each with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(3) Within incorporated cities and towns and upon county roads or secondary highways, the department of transportation shall not control access without the consent of the appropriate governing body.

(4) Each authority may also exercise with relation to controlled-access facilities any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled-access facilities by any vehicles or traffic.

History: (1), (3), (4)En. Sec. 10-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 436, L. 1973; Sec. 32-4305, R.C.M. 1947; (2)En. Sec. 8-218, Ch. 197, L. 1965; Sec. 32-4018, R.C.M. 1947; R.C.M. 1947, 32-4018, 32-4305; amd. Sec. 3, Ch. 512, L. 1991.

- **Uses associated with railroad authorities exercising the right of eminent domain**

7-14-1625. Railroad acquisition and operation -- permits -- eminent domain. (1) Within the boundaries of the authority, the authority may establish, acquire, construct, purchase, improve, maintain, equip, operate, regulate, and protect railroads and railroad facilities, including but not limited to terminal buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock, as may be necessary to carry out the provisions of this part.

(2) The authority may apply to a public agency for permits, consents, authorizations, and approvals required for the acquisition and operation of a railroad and take all actions necessary to comply with their conditions.

(3) The authority may acquire property for a public purpose in the same manner as a county, except that the authority does not have the power of eminent domain with respect to property owned by another authority or by a political subdivision or property owned by a railroad corporation unless the interstate commerce commission or another authority with power to make the finding has found that the public convenience and necessity permit discontinuance of rail service on the property.

History: En. Sec. 10, Ch. 333, L. 1993.

- **Uses associated with municipal housing authorities exercising the right of eminent domain**

7-15-4461. Acquisition of property by authority for government housing project. The authority may acquire, by purchase or by the exercise of its power of eminent domain as provided in 7-15-4462, any real or personal property for any housing project being constructed or operated by a government. The authority, upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

History: En. Sec. 12, Ch. 140, L. 1935; re-en. Sec. 5309.12, R.C.M. 1935; R.C.M. 1947, 35-112.

7-15-4462. Exercise of power of eminent domain. (1) After the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, the authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this part and part 45.

(2) The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Title 70, chapter 30; or

(b) Any other applicable statutory provisions for the exercise of the power of eminent domain.

(3) Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality within the boundaries of the authority or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if there be any, having regulatory power over such corporation.

History: En. Sec. 11, Ch. 140, L. 1935; re-en. Sec. 5309.11, R.C.M. 1935; R.C.M. 1947, 35-111.

- **Uses associated with airport authorities exercising the right of eminent domain**

67-11-201. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes and including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at the airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities; provided, however, an authority may not acquire or take over any airport or air navigation

facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of the authority, municipality, or public agency;

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any submerged lands under public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for the protection of the airport.

History: En. 1-909 by Sec. 8, Ch. 433, L. 1971; R.C.M. 1947, 1-909(part); amd. Sec. 133, Ch. 584, L. 1999.

- **Uses associated with pipelines exercising the right of eminent domain**

69-13-104. Use of power of eminent domain. Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this chapter, which shall have filed with the commission its acceptance of the provisions of this chapter, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of his, its, or their common carrier pipeline. The manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads.

History: En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).

- **Uses associated with rural cooperative utilities exercising the right of eminent domain**

35-18-106. Powers of cooperatives. A cooperative has power to:

- (1) sue and be sued in its corporate name;
- (2) have perpetual existence;
- (3) adopt a corporate seal and alter the same at pleasure;
- (4) become a member in one or more other cooperatives or corporations or to own stock in other cooperatives or corporations;
- (5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or personal property, which may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;
- (6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;
- (7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;
- (8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;
- (9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;
- (10) conduct its business and exercise all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures;

(14) do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957; R.C.M. 1947, 14-503; amd. Sec. 3, Ch. 237, L. 1979; amd. Sec. 2, Ch. 254, L. 1985; amd. Sec. 4, Ch. 168, L. 1987; amd. Sec. 2, Ch. 61, L. 1993.

- **Uses associated with natural gas public utilities exercising the right of eminent domain**

82-10-303. Use of eminent domain to acquire underground reservoirs. (1) A natural gas public utility may acquire through the exercise of the right of eminent domain as provided in this part for its use for the underground storage of natural gas an underground reservoir which the board finds is suitable and in the public interest for the underground storage of natural gas, and in connection with the underground reservoir, the utility may acquire such other interests in property as may be required adequately to maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) No sand, formation, or stratum which is producing or has produced or which is capable of producing oil is subject to appropriation under this section.

(b) No gas-bearing sand, formation, or stratum is subject to appropriation under this section, unless the recoverable volumes of native gas therein have all been produced or unless the sand, formation, or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas or for the conservation of natural gas than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein. Gas, sand, formation, or stratum may not be acquired under this part when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations, not exceeding, however, the quantity of the appropriated gas that

remained recoverable from the sand, formation, or stratum at the time of its acquisition, if the operator was at that time entitled to the whole thereof or if the operator was at that time entitled to less than the whole thereof, then not to exceed the quantity thereof to which the operator was then entitled.

(c) Only the area of the underground sand, formation, or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated.

(d) No rights or interests in existing underground gas reservoirs being used for the injection, storage, or withdrawal of natural gas owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same are subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section shall be without prejudice to the rights of the owner of the lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with those rules or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

History: En. Sec. 3, Ch. 259, L. 1955; amd. Sec. 85, Ch. 253, L. 1974; R.C.M. 1947, 60-803.

- **Uses associated with mining companies exercising the right of eminent domain**

82-2-221. Eminent domain for open-pit mining -- purchase of property required. Whenever the right of eminent domain is exercised to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the plaintiff, the decree shall be granted on condition that the plaintiff protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots, provided the owner or owners thereof serve upon the plaintiff and file with the court a written offer stating the amount asked for such property within 30 days from the entry of the court order appointing commissioners in said eminent domain proceeding. In the event the plaintiff and the owner or owners are unable to agree upon the compensation to be paid for such property, the court, upon petition of either party, may proceed to determine the compensation to be paid for such property in the manner prescribed in Title 70, chapters 30 and 31, as amended, for ascertaining the value of property taken through the exercise of the right of eminent domain.

History: En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973; R.C.M. 1947, 50-813.

- **Uses associated with railroad corporations from other states exercising the right of eminent domain**

69-14-513. Lease or purchase of other railroads. (1) Any railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana, the United States, or any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances thereto. The railroad company of any other state of the United States which purchases or leases a railroad or any part thereof in this state:

(a) shall possess and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain; and

(b) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state.

(2) Any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States, this state, or any other state or territory of the United States.

(3) All roads or branches thereof in this state, whether purchased or leased, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

(4) Before any such lease or purchase shall be effective, it shall be assented to or approved or ratified by the

stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders, by the holders of a majority in amount of all the outstanding capital stock of the company.

History: En. Sec. 704, 5th Div. Comp. Stat. 1887; re-en. Sec. 912, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 6525, R.C.M. 1921; Cal. Civ. C. Sec. 473a; re-en. Sec. 6525, R.C.M. 1935; R.C.M. 1947, 72-223(part); amd. Sec. 46, Ch. 43, L. 1979.

69-14-536. Extension of rail lines into Montana. (1) Any railroad corporation chartered by or organized under the laws of the United States or of any state or territory may extend, construct, maintain, and operate its railroad into and through this state to any place within the state and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state or building any such branch road or any such continuation, the corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch, or continuation and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate such extension and build, maintain, and operate such branch or continuation, including the right of eminent domain, which it would have had if it had been incorporated for such purposes under the general laws of Montana. Any corporation of another state or of the United States extending its railroad or any portion thereof into or through this state:

(a) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state; and

(b) is subject to taxation and regulation and control by the laws of this state, in all respects the same as if the line were constructed by corporations organized under the laws of this state.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 702, 5th Div. Comp. Stat. 1887; re-en. Sec. 910, Civ. C. 1895; re-en. Sec. 4291, Rev. C. 1907; re-en. Sec. 6523, R.C.M. 1921; re-en. Sec. 6523, R.C.M. 1935; R.C.M. 1947, 72-221; amd. Sec. 49, Ch. 43, L. 1979.

- **Uses associated with Montana railroad corporations exercising the right of eminent domain**

69-14-552. Authority to hold and transfer property. Every railroad corporation has power to:

(1) receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;

(2) purchase or by voluntary grants or donations receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

(3) purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road and all necessary appendages and adjuncts or acquire them in the manner provided in Title 70, chapter 30, for the condemnation of lands.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

- **Uses associated with cemetery associations exercising the right of eminent domain**

35-20-104. Effect of filing -- powers of association -- eminent domain. Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated and shall have the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually and in addition thereto such corporations shall have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead. Such power of eminent domain to be exercised under the provisions of Title 70, chapter 30.

History: En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R.C.M. 1921; re-en. Sec. 6472, R.C.M. 1935; R.C.M. 1947, 9-104.

- **Uses associated with Department of Fish, Wildlife, and Parks exercising the right of eminent domain**

23-1-102. Powers and duties of department of fish, wildlife, and parks. The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state and may by purchase, lease, agreement, acceptance of donations, or condemnation for the purposes outlined in 87-1-209(2) acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part. A contract, for any of the purposes of this part, may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available and, if the contract or obligation pertains to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, until the board of land commissioners has specifically approved such acquisition. The department also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of transportation and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The department may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of this part.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 62-304; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1981; amd. Sec. 1, Ch. 418, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

- (a) for fish hatcheries, nursery ponds, or game farms;
- (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;
- (c) for public hunting, fishing, or trapping areas;
- (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;
- (e) for state parks and outdoor recreation;
- (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and waters for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and waters without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land.

History: En. 26-104.6 by Sec. 7, Ch. 511, L. 1973; amd. Sec. 1, Ch. 157, L. 1975; amd. Sec. 4, Ch. 417, L. 1977; R.C.M. 1947, 26-104.6; amd. Sec. 2, Ch. 379, L. 1979; amd. Sec. 2, Ch. 230, L. 1981; amd. Sec. 2, Ch. 418, L. 1981; amd. Sec. 50, Ch. 519, L. 1983; amd. Sec. 2, Ch. 340, L. 1985; amd. Sec. 151, Ch. 370, L. 1987; amd. Sec. 1, Ch. 110, L. 1993; amd. Sec. 1, Ch. 184, L. 1997.

- **Uses associated with Department of Public Health and Human Services exercising the right of eminent domain**

53-2-201. Powers and duties of department. (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, FAIM financial assistance, as defined in 53-2-902, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, medical care payments in behalf of recipients of public assistance, employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families;

(b) give consultant service to private institutions providing care for adults who are needy, indigent, or dependent or who have disabilities;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes;

(g) make rules governing payment for services and supplies provided to recipients of public assistance; and
(h) adopt rules regarding assignment of monetary and medical support upon application for FAIM financial assistance, as defined in 53-2-902, and related medical assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property that is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957; amd. Sec. 20, Ch. 121, L. 1974; amd. Sec. 13, Ch. 37, L. 1977; R.C.M. 1947, 71-210; amd. Sec. 1, Ch. 199, L. 1979; amd. Sec. 1, Ch. 511, L. 1981; amd. Sec. 1, Ch. 465, L. 1983; amd. Sec. 72, Ch. 609, L. 1987; amd. Sec. 10, Ch. 561, L. 1993; amd. Sec. 51, Ch. 472, L. 1997; amd. Sec. 6, Ch. 486, L. 1997.

- **Uses associated with the Department of Transportation exercising the right of eminent domain**

60-4-111. Acquisition of property for controlled-access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right-of-way is hereby given, dedicated, and set apart for controlled-access highways or controlled-access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled-access highway. Acquisition of any county road, street, or alley for use as a controlled-access highway or controlled-access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965; R.C.M. 1947, 32-3920.

67-2-301. State airports -- acquisition. (1) The department may, on behalf of and in the name of this state:

(a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside this state;

(c) prior to acquisition, make investigations, surveys, and plans;

(d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

(e) dispose of any property, airport, restricted landing area, or any other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other like property of the state.

(2) The department may not, however, acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The department may erect, equip, operate, and maintain on an airport, buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with it.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the department may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. The department may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the

right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in all those activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property which it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes. The acquisition of property for any of those purposes is a public use.

History: En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977; R.C.M. 1947, 1-401(1) thru (5).

67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such as air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter, in any case in which:

(1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

History: En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721.

75-15-123. Acquisition of outdoor advertising rights -- compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and which by virtue of 75-15-111(1) is nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

(2) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under 23 U.S.C. 131(g), with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 166, Ch. 316, L. 1974; amd. Sec. 6, Ch. 216, L. 1975; R.C.M. 1947, 32-4723(part); amd. Sec. 14, Ch. 68, L. 1979.

75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills. (1) When the department of transportation determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department of transportation determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation such interests in lands as may be necessary to secure the relocation, removal, or disposal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills which were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of transportation shall pay just compensation to the owner for the relocation, removal, or disposal of any such facility.

(4) Any new site chosen by the department of transportation pursuant to subsection (2) for the relocation of a garbage dump or sanitary landfill must be approvable as the site of a solid waste management system pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority of that part.

History: En. Sec. 8, Ch. 285, L. 1967; amd. Sec. 157, Ch. 316, L. 1974; R.C.M. 1947, 32-4520; amd. Sec. 4, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

- **Uses associated with the Montana Department of Environmental Quality exercising the right of eminent domain**

75-10-720. Condemnation -- creation of state lien. (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts 1 through 3.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

(6) If the department expends money from the fund for orphan share remedial action costs at a facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for the unrecovered costs. The lien:

(a) may not exceed the increase in fair market value of the property attributable to the unfunded portion of the remedial action at the time of a subsequent sale or other disposition of the property;

(b) arises at the time costs are first incurred by the department with respect to a remedial action at the facility;

(c) must be filed according to subsection (3); and

(d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs incurred at the facility.

(7) Payment of any liens under this section must be deposited in one of the two accounts from which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share fund established in 75-10-743.

History: En. Sec. 12, Ch. 709, L. 1989; amd. Sec. 9, Ch. 415, L. 1997.

82-4-239. Reclamation. (1) The department may have reclamation work done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the department must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The department shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) (a) The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

- (i) land or water resources have been adversely affected by past coal-mining practices;
- (ii) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
- (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(b) After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter on the property adversely affected by past coal-mining practices and on any other property necessary for access to the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money expended and may file a statement of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money expended resulted in a significant increase in property value. The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. A lien under this subsection may not be filed against the property of a person who owned the surface prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and must be recorded with the statement provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The department may acquire the necessary property by gift or purchase. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

- (a) the property is necessary for successful reclamation;
- (b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

- (ii) acquisition of coal refuse disposal sites and all coal refuse on the land will serve the purposes of this

part because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices.

History: En. Sec. 20, Ch. 325, L. 1973; amd. Sec. 27, Ch. 441, L. 1975; R.C.M. 1947, 50-1053(part); amd. Sec. 14, Ch. 550, L. 1979; amd. Sec. 26, Ch. 526, L. 1983; amd. Sec. 375, Ch. 418, L. 1995.

82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

History: En. Sec. 2, Ch. 329, L. 1995.

- **Uses associated with Department of Natural Resources and Conservation exercising the right of eminent domain**

85-1-209. Acquisition of property by department. (1) The department may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises,

and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned must be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

(2) In a condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired, as disclosed by the public records, must be made parties and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) Taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects the part of the water rights that the department determines is necessary. Upon the adoption of the order, the water rights are considered a part of each of the works or projects to the extent that the water rights have been apportioned or allocated to the works or projects.

History: (1) thru (3)En. Sec. 4, Ch. 35, Ex. L. 1933; re-en. Sec. 349.4, R.C.M. 1935; amd. Sec. 123, Ch. 253, L. 1974; Sec. 89-104, R.C.M. 1947 (4)En. Sec. 2, Ch. 3, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; re-en. Sec. 349.2, R.C.M. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967; amd. Sec. 120, Ch. 253, L. 1974; Sec. 89-102, R.C.M. 1947; R.C.M. 1947, 89-102(7), 89-104; amd. Sec. 15, Ch. 301, L. 1995; amd. Sec. 420, Ch. 418, L. 1995.